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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,096	08/28/2001	Hiroaki Taniguchi	SHC0141	5776

7590 12/08/2005

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EXAMINER

COLE, ELIZABETH M

ART UNIT PAPER NUMBER

1771

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.

09/941,096

Applicant(s)

TANIGUCHI, HIROAKI

Examiner

Elizabeth M. Cole

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/28/01; 11/26/04.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. In view of the IDS filed on 11/26/05, PROSECUTION IS HEREBY REOPENED.

A new rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

2. Claims 1-2, 4, 9-10, 11, 13, 15, are rejected under 35 U.S.C. 102(b) as being anticipated by McCormack et al, U.S. Patent No. 5,882,769 for the reasons set forth in paragraph 4 of the previous action. With regard to new claims 11, 13 and 15, the bulgy areas of McCormack have the claimed shape. See figures.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1771

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9-16, 18 and 19 rejected under 35 U.S.C. 102(b) as being anticipated by Boich, U.S. Patent No. 5,939,178. Boich discloses a sheet comprising an imperforate elastomeric film having a plurality of bulgy regions which are bonded to a fibrous nonwoven layer at the apex of the bulgy regions. See figures 4 and 5 which show the elastomeric sheet 10 and the nonwoven sheet 12 wherein the sheet 10 is bonded to the nonwoven 12 at points 16. The regions of the sheet 12 between the bonding point 16 are substantially flat. See figure 4. When the sheet is under tension as shown in figure 4, the bulgy areas project from the sheet and have a flat back portion. When the sheet is not under tension as shown in figure 5, the bulgy areas comprise opposing curved portions extending away from each other. The bulgy areas are solid. See figures.

5. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack et al in view of Thornton et al, U.S. Patent No. 5,244, for the reasons set forth in paragraph 5 of the previous action. It is noted that the citation of Reed in the previous action was an editing error. The rejection does not rely on Reed.

6. Claims 1-8, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boich, U.S. Patent No. 5,939,178 in view of Thornton et al, U.S. Patent No. 5,244,716. Boich discloses a sheet comprising an imperforate elastomeric film having a plurality of bulgy regions which are bonded to a fibrous nonwoven layer at the apex of the bulgy

Art Unit: 1771

regions. See figures 4 and 5 which show the elastomeric sheet 10 and the nonwoven sheet 12 wherein the sheet 10 is bonded to the nonwoven 12 at points 16. The regions of the sheet 12 between the bonding point 16 are substantially flat. See figure 4. When the sheet is under tension as shown in figure 4, the bulgy areas project from the sheet and have a flat back portion. When the sheet is not under tension as shown in figure 5, the bulgy areas comprise opposing curved portions extending away from each other. The bulgy areas are solid. See figures. Boich differs from the claimed invention because Boich does not disclose that the film is vapor permeable. Thornton discloses a discontinuously bonded material comprising an imperforate, water vapor permeable, liquid impermeable film layer such as a polyurethane layer and a fabric . The two layers are discontinuously bonded so that the fabric layer will be flat while the film layer is pleated into a plurality of parallel pleats. See figure 3a where 105 refers to the film and 100 refers to the fabric. The parallel pleats correspond to the claimed structure of uniformly spaced bulgy zones. The film may comprise a polyurethane material and may have a WVTR which would meet the claimed limitations. See col. 13, lines 19-38. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed a polyurethane film having the claimed WVTR as taught by Thornton. One of ordinary skill in the art would have been motivated to employ the vapor permeable sheets of Thornton because Thornton teaches that such film are suitable for use in laminates comprising film layers and fabric layers in order to improve the comfort of users of articles comprising the laminate.

Art Unit: 1771

7. Applicant's arguments filed 10/5/05 have been fully considered but they are not persuasive. Applicant argues that the McCormack structure does not show bonding "along" the bulgy zones. However, "along" is defined as in a line parallel with the length or direction of". The bonding in McCormack is "along" the bulgy zones. Applicant's arguments and drawings in the Appeal Brief argue that along means that the bonding point must be at the apex of each of the bulgy zones but this limitation is not what is claimed. The claims only require bonding along, i.e., in a line parallel with the length or direction of, the bulgy zones and McCormack meets this limitation.

8. The IDS filed 11/26/04 was not matched with the file prior to the final rejection of 12/22/04. Therefore, prosecution is re-opened and a rejection employing art cited in the IDS is set forth above.

9. Applicant's arguments in the Appeal Brief are persuasive with regard to the 112^{1st} paragraph rejection since the figures show that the bulgy zones are not hollow.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McFarren, U.S. Patent No. 3,575,764 discloses a breathable embossed sheet which is bonded on one or both of its faces with a nonwoven. McFarren does not teach that the protuberances formed by embossing are parallel and continuous.

11. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 11/26/04 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS**

Art Unit: 1771

MADE FINAL. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

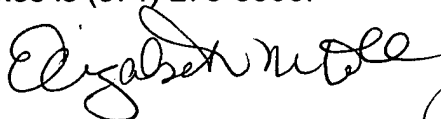
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.



Elizabeth M. Cole

ELIZABETH M. COLE
PRIMARY EXAMINER



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